

REMARKS

Applicants have added new claims 48-49 which are supported by the teachings of Fig. 2 and the respective teachings of the disclosure.

Claims 1-47 stand rejected under 35 USC 112, first paragraph. Claims 1-46 stand rejected under 35 USC 112, first paragraph. Claims 1-47 stand rejected under 35 USC 112, second paragraph, for indefiniteness. Claims 1-46 stand rejected under 35 USC 112, second paragraph, for indefiniteness. Claims 21-36 and 41-42 stand rejected under 35 USC 101. Claims 1-47 stand rejected under 35 USC 102(b) for anticipation by U.s. Patent No. 6,442,706 to Wahl et al.

Applicants respectfully request reconsideration of the rejections and objections.

Referring to the objection to the drawings, the Office has requested that Fig. 1 be labeled as prior art. Applicants respectfully submit that Fig. 1 is not prior art and is correct as-filed. Furthermore, Applicants respectfully submit that the request to amend Fig. 1 to recite "prior art" is contrary to the teachings of the specification which clearly recite that Fig. 1 illustrates inventive embodiments of the present disclosure and accordingly the request is also contrary to MPEP 2163.06 (8th ed., rev. 7).

Applicants have electronically searched the entirety of the present specification and have failed to uncover any reference therein to "prior art" let alone any reference in the specification that Fig. 1 is prior art. To the contrary of stating that Fig. 1 is prior art, the specification clearly states that Fig. 1 is directed towards embodiments of the invention as set forth in the Detailed Description of the Invention section of the specification.

Applicants also respectfully submit that the analysis of the Office set forth on page 3 of the Office Action is faulty. In particular, the Office alleges that the protected computer systems are common and well known. However, the Office fails to refer to the data management system 16 which is clearly illustrated in Fig. 1. Indeed, Fig. 1 illustrates one possible application of one embodiment of the data management systems which are claimed in independent claims 1 and 16.

Applicants respectfully submit the objection to the drawings is in error and contrary to the teachings of the originally-filed specification. Applicants respectfully

request withdrawal of the objection to the drawings.

Referring to the objection to the title, Applicants respectfully submits that the present title corresponds exactly to preambles of the pending claims and accordingly is highly indicative of embodiments of the invention to which the claims are directed.

In addition, Applicants respectfully submit that the title is accurate and in compliance with the CFR. In particular, 37 CFR 1.72 states that the title must be short as possible. Applicants respectfully submit that the title complies with the requirements of the CFR. In particular, the title corresponds to preambles of pending claims of the present application. Accordingly, the title is both specific to subject matter of claims of the application and is also brief. Applicants respectfully assert that the present title is sufficient for indexing, classification and searching. Applicants respectfully request approval of the title as submitted as corresponding to subject matter of claims of the application, and accordingly, is specific and descriptive of subject matter of the application while also complying with the brevity requirement of the CFR.

Accordingly, Applicants respectfully requests reconsideration of the objection to the title for the above-mentioned compelling reasons.

Referring to the objection to the specification, Applicants note that the specification originally filed in the present application included a Summary of the Invention section which included language of the independent claims. The Office, without any support that such language in the original Summary was improper, objected to the Summary. In an effort to facilitate the prosecution of the present application, Applicants deleted the previously objected-to Summary. Now, the Office still objects to the specification in the present Office Action.

The Office refers to MPEP 608.01(d) in support of the objection to the specification. Applicants note that *MPEP 608.01(d) is devoid of any requirement that the application must include a summary*. 37 CFR 1.73 clearly does not require a summary section by explicitly stating that the brief summary of the invention should precede the detailed description. 1.73 further provides “[s]uch summary should, **when set forth**, be commensurate with the invention as claimed...” (emphasis added) It is clear from such rule that a summary is not required and the objection to the specification on this basis is in error.

Applicants respectfully submit the Examiner has failed to identify any authority that the application must include a Summary. To the contrary, the authority including the MPEP and CFR noted above make explicitly clear that the summary is optional and not required. However, Applicants agree to again amend the specification to include a summary in the format of the original Summary section as included in the original filing of the application if such would further the prosecution of the present application. Indeed, Applicants respectfully submit that the original summary including language of the independent claims complied with 37 CFR 1.73 stating that, if a summary is provided, it should be commensurate with the invention as claimed.

Applicants respectfully submit the specification is proper.

The Office states on page 4 of the Office Action that the amendment filed January 10, 2007 introduced new matter. In particular, the Office states that the added material "wherein the storage devices are external to the protected computer systems" of the amendment is not supported by the original disclosure.

Applicants disagree and submit the above-recited language is clearly supported by the original disclosure. Applicants respectfully refer to Fig. 1 which illustrates a data management system 16 external of a plurality of protected computer systems 14. Fig. 2 depicts additional details of the data management system 16, in particular, the data management system 16 of Fig. 2 includes a plurality of storage devices 34 in one embodiment. Accordingly, Applicants respectfully submit that the teachings of the example embodiments of Figs. 1 and 2 disclosing the data management system 16 (which includes storage devices 34) external of the protected computer systems 14 support the added material that the *storage devices are external to the protected computer systems*.

Applicants respectfully request reversal of this objection to the specification since no new matter has been added.

Referring to the 112, first paragraph rejection, the MPEP states the test for sufficiency of support in an application is whether the disclosure relied upon reasonably conveys to the artisan that the inventor had possession of the claimed subject matter. MPEP §2163.02 (8th ed., rev. 7) *citing Ralston Purina Co. v Far-Mar-Co., Inc.*, 772 F.2d 1570, 1575, 227 USPQ 177, 179 (Fed. Cir. 1985). Notably, the subject matter of the claim need not be described literally (i.e., using

the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement. MPEP §2163.02 (8th ed., rev. 7).

The Office states that the claims and specification refer to “protected computer systems” and that this terminology is only repeated in the specification and drawings without being defined. To the contrary, the specification is clear that the protected computer systems 14 are devices which are protected by the data management system 16 since the data management system 16 stores (e.g., back-up) the electronic data of the protected computer systems 14.

More specifically, Applicants refer the Office to paragraph 0021 of the original specification which clearly states that **protected computer systems 14** are configured to generate electronic data to be stored for subsequent retrieval and access. Exemplary protected computer systems 14 may comprise personal computers, work stations, servers, combinations of such devices, and/or other electrical devices capable of providing or accessing electronic data. Applicants further refer to paragraph 0022 of the originally-filed specification which provides that the data management system 16 is configured to store (protect) electronic data of the protected computer systems 14. Data management system 16 may operate to perform exemplary operations, such as backup and restore, with respect to electronic data of protected computer systems 14 as explicitly disclosed in paragraph 0022 of the specification.

Accordingly, Applicants respectfully submit that the specification is clear that the protected computer systems 14 generate electronic data. Furthermore, it is clear from the specification that the data management system 16 stores or protects the electronic data generated by the protected computer systems 14.

Applicants respectfully submit that the disclosure reasonably conveys to the artisan that the inventor had possession of the claimed subject matter. Indeed, Applicants note that the original claims included the terminology of “protected computer systems.”

Applicants submit that the claim terminology of a protected computer system is adequately described in the specification and the artisan would reasonably consider the claim terminology to be possessed by the inventor at the time the application was filed.

The MPEP 2163 IA (8th ed., rev. 7) provides with respect to original claims

that there is a **strong presumption** *that an adequate written description of the claimed invention is present when the application is filed. In re Wertheim*, 541 F.2d 257, 263, 191 USPQ 90, 97 (CCPA 1976). Applicant notes that the claim terminology identified by the Office has been pending since the filing of the original application and accordingly there is a strong presumption that adequate written description is present.

Applicants respectfully request withdrawal of the 112, first paragraph, rejection for the above-mentioned reasons.

Referring to the 112, second paragraph rejection, 35 U.S.C. §112, second paragraph, requires that the claims particularly point out and distinctly claim the subject matter that *the patent applicant regards as their invention*. "Distinctly" has been interpreted to mean simply that the claim must have a clear and definite meaning when construed in the light of the complete patent document. *Standard Oil Company v. American Cyanamid Company*, 774 F.2d 448, 227 USPQ 293 (Fed. Cir. 1985). Further, the definiteness of the claim language employed must not be analyzed in a vacuum, but always in light of the teachings of the prior art and of the particular application disclosure as it would be interpreted by one of having ordinary skill in the pertinent art.

Applicant refers to MPEP §2173.02 (8th ed., rev. 7) which states the essential inquiry pertaining to a §112, second paragraph requirement is whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. Definiteness of claim language must be analyzed, not in a vacuum, but in light of:

- (A) the content of the particular application disclosure;
- (B) the teachings of the prior art; and
- (C) the claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.

In reviewing a claim for compliance with 35 U.S.C. §112, second paragraph, the Examiner must consider the claim as a whole to determine whether the claim apprises one of ordinary skill in the art of its scope and, therefore, serves the notice function required by 35 U.S.C. §112, second paragraph by providing clear warning to others as to what constitutes infringement of the patent. MPEP §2173.02 (8th

ed., rev. 7). A fundamental principle contained in 35 U.S.C. 112, second paragraph is that applicants are their own lexicographers and they can define in the claims what they regard as their invention essentially in whatever terms they choose. MPEP §2173.01 (8th ed., rev. 7).

Applicant submits that the claims are clear and definite on their face. Moreover, one of ordinary skill in the art with the opportunity to consider and review the contents of the application disclosure including paragraphs 0021 and 0022 pursuant to the above authority would clearly understand the language of the claims. Applicants respectfully request withdrawal of the 112, indefiniteness rejections for at least the above-mentioned compelling reasons.

The Office also objects to the terminology “protected computer system.” Paragraph 0021 of the original specification clearly states that protected computer systems 14 are configured to generate electronic data to be stored for subsequent retrieval and access. Exemplary protected computer systems 14 may comprise personal computers, work stations, servers, combinations of such devices, and/or other electrical devices capable of providing or accessing electronic data. Applicants respectfully submit that one of skill in the art would understand the claim terminology to be clear and definite when construed in light of the teachings of the specification.

Referring to the specific issue (a) raised on page 6 of the Office Action, the data management system 16 provides protection as described in one example at paragraph 0022 of the specification in the form of storing data of computer systems which are protected, i.e., protected computer systems. An example of hardware of the data management system 16 is shown in Fig. 2 according to one embodiment. Applicants note that the claims are void of “client,” “administrator,” or “software.”

Referring to issue (b) raised on page 6 of the Office Action, Applicants refer the Office to the teachings in paragraph 0021 of the specification as filed for examples of protected computer systems. Applicants additionally note that the specification and claims are void of any reference to “firewall” or “security.”

Referring to issue (c) raised on page 7 of the Office Action, Applicants respectfully submit the specification is not silent as to the meaning of protected computer system. In particular, Applicants respectfully submit that one of ordinary

skill in the art would understand from the teachings of paragraph 0021 of the specification that protected computer systems refer to systems configured to generate electronic data and may include personal computers, work stations, servers or other devices, for example. Furthermore, Applicants respectfully submit that one of ordinary skill understands from the teachings of paragraph 0022 of the specification that the data management system is configured to protect the electronic data of protected computer systems in the form of storing the electronic data of the protected computer systems and may operate to backup and restore the protected computer systems.

Applicants respectfully submit that the claims have a clear and definite meaning when construed in the light of the complete patent document and comply with 112, second paragraph.

Referring to the 112, second paragraph rejection of claims 22-23, the claims have been amended for further clarification in an effort to further the prosecution of the application. Applicants respectfully submit that claims 22-23 are understood by one of skill in the art and in compliance with 112, second paragraph.

Referring to the 112, second paragraph rejection of claims 43-47, the claims have been amended for further clarification in an effort to further the prosecution of the application. Applicants respectfully submit that claims 43-47 are understood by one of skill in the art and in compliance with 112, second paragraph.

Applicants respectfully request reversal of all 112, second paragraph rejection of the claims for at least the above-mentioned reasons.

Referring to the 101 rejection of claims 21-23 and 41, Applicant has amended independent claim 21 to recite that the processor-usable medium is configured to store processor-usable code and therefore recites statutory subject matter as set forth on page 8 of the Action.

Applicants respectfully request reconsideration and withdrawal of the 101 rejection of claims 21-23 and 41.

Referring to the 101 rejection of claim 24, such claim is clearly directed to a particular apparatus in the form of the data management system since claim 24 recites that it is an operational storage method of a data management system. Furthermore, the claim recites providing plural storage devices of a data management system and acts of monitoring, associating and implementing storage

operations with respect to the particular apparatus.

Applicants respectfully submit that claim 24 and respective dependent claims meet the 101 criteria set forth on page 8 of the Action as being directed towards a particular apparatus, and accordingly, claim 24 is proper statutory subject matter.

Referring to the 101 rejection of claim 33, such claim is clearly directed to a particular apparatus in the form of the data management system since claim 33 recites that it is an operational storage method of a data management system. Furthermore, the claim recites providing plural storage devices of a data management system and acts of storing, monitoring, and coupling with respect to the particular apparatus.

Applicants respectfully submit that claim 33 and respective dependent claims meet the 101 criteria set forth on page 8 of the Action as being directed towards a particular apparatus, and accordingly, claim 33 is proper statutory subject matter.

Applicants respectfully request reconsideration and withdrawal of the 101 rejection of claims 24-36 and 42 for the above-mentioned compelling reasons.

Referring to the prior art rejections, independent claim 1 recites that the data management system comprises *a data storage system configured to store data of a plurality of protected computer systems*. The Examiner relies upon the teachings of col. 24, lines 5-24 of Wahl. These teachings refer to a primary computer system 12 and a secondary computer system 14. Referring to col. 6, lines 35+ of Wahl, the primary computer system 12 is disclosed as a storage device which “provides primary application and data storage services to a user.” Wahl fails to teach that the primary computer system 12 stores data of any other devices. Furthermore, the secondary computer system 14 is disclosed as a storage device which “stores a copy of the data from the primary computer system 12” per col. 6, lines 42+. The teachings of secondary computer system 14 storing data of a single device fails to teach or suggest the claimed limitations of the *data storage system configured to store data of a plurality of protected computer systems*.

The Office in relying upon the teachings of col. 24, lines 5-24 of Wahl (where the secondary computer system 14 stores the data of the primary computer system 12) as allegedly teaching the above-recited claimed limitations takes the position that the secondary computer system 14 teaches the claimed data storage system and the primary computer system 12 teaches the claimed protected

computer systems. However, Wahl is void of any teachings that the secondary computer system 14 stores data of a plurality of computer systems (primary or otherwise) which fails to teach the claimed limitations that the *data storage system is configured to store data of a plurality of protected computer systems*.

Applicants respectfully submit that the above positively-recited limitations of the claims are not disclosed by Wahl and the 102 rejection of the claims is improper for at least this reason.

Independent claim 1 further recites the *data storage system comprises a plurality of storage devices* and a *quantity of data of the protected computer systems to be stored exceeds capacities of individual ones of the storage devices*. The Office relies upon teachings in col. 24, lines 5-24 and col. 3, lines 24-37 of Wahl. However, the teachings in col. 24 generally describe the secondary storage system 14 storing data of the primary storage system 12 but Applicants have failed to uncover any teachings that the quantity of data of the primary storage system 12 exceeds the capacity of storage devices of the secondary computer system 14 which fails to teach the claimed limitations that the *quantity of data of the protected computer systems to be stored exceeds capacities of individual ones of the storage devices*.

The teachings in col. 3, lines 24-37 are generic teachings included in the Summary of Wahl and fail to teach that a quantity of data of the primary computer system 12 exceeds capacities of individual ones of the storage devices of the secondary computer system 14 relied upon by the Office as teaching the protected computer systems and the plurality of storage devices, respectively, recited in claim 1. The teachings in col. 3 fail to teach or suggest the above-recited limitations.

Furthermore, the teachings in col. 3 refer to the writelog device and Applicants submit that the Wahl teachings of writing of data from a cache of the writelog device of the primary system 12 to a dirty bit map disk drive device of the writelog device to avoid memory overflow fails to refer to the computer systems having data to be stored and fails to teach the limitations that the *quantity of data of the computer systems to be stored exceeds capacities of individual ones of the storage devices*. The writelog device of Wahl is part of the *primary computer system* per col. 6, lines 59+ and fails to teach that the quantity of data of the protected computer systems *exceeds capacities of individual ones of the storage*

devices of the data storage system. Furthermore, the writelog device *journals time-sequenced writes* to the local data device 16 and accordingly Wahl teaches storage of data of the primary computer system 12 using the local data devices.

Applicants respectfully submit that the above positively-recited limitations of the claims are not disclosed by Wahl and the 102 rejection of the claims is improper for at least this reason.

Claim 1 further recites *storage control circuitry configured to assign individual ones of the individual storage devices to store data for respective ones of the protected computer systems*. The Office above relies upon the teachings of the computer systems 12, 14 of Wahl to teach the protected computer systems and the data storage system, respectively. However, the teachings relied upon by the Office fail to teach a plurality of primary computer systems 12 let alone that plural storage devices of the secondary computer system 14 are assigned to store data for respective ones of plural primary computer systems 12.

The Office relies upon teachings in col. 5, lines 32 – col. 6, line 27 and col. 24, lines 5-24 of Wahl as allegedly teaching the above-recited limitations. However, the teachings in cols. 5 and 6 are generic teachings which generally describe aspects of the data mirroring system of Wahl and are void of teachings that the primary and secondary computer systems 12, 14 teach the above-recited limitations. Furthermore, the teachings in col. 24 generally describe the primary and secondary storage systems 12, 14 but Applicants have failed to uncover any teachings therein of the claimed limitations reciting *storage control circuitry configured to assign individual ones of the individual storage devices to store data for respective ones of the protected computer systems*.

In addition, MPEP 2114 (8th ed., rev. 7) is void of any authority that ‘wherein’ clauses cannot be relied upon for patentability. Furthermore, the wherein clause reciting that the data storage system comprises a plurality of storage devices and the quantity of the data of the protected computer systems exceeds capacities of individual ones of the storage devices clearly recites structure and such claimed structure of the data storage system is not disclosed by the primary and secondary computer systems 12, 14 or other teachings of Wahl.

Furthermore, in compliance with 112, second paragraph, the wherein clauses are appropriate as opposed to “further comprising” clauses since the limitations of

the wherein clauses further define previously-recited limitations as opposed to adding entirely new limitations.

Applicants respectfully submit that positively-recited limitations of the claims are not disclosed by Wahl and the 102 rejection is improper for at least this reason.

Applicants respectfully request withdrawal of the rejections for at least the above-mentioned compelling reasons.

Referring to independent claim 16, the *data management system comprises plural means for storing electronic data*, means for communicating data intermediate the plural means for storing and a plurality of protected computer systems, wherein a quantity of data of the protected computer systems exceeds individual data storage capacities of individual ones of the means for storing.

The Office relies upon teachings of the Summary of the Invention section including col. 3 of Wahl in support of the rejection and as teaching the above-identified limitations. In particular, the teachings at col. 3, lines 24+ of Wahl refer to a writelog device and for assigning additional memory space to prevent memory overflow conditions. Applicants have failed to uncover any teachings in col. 3, lines 24+ of quantities of data of the protected computers systems and the individual data storage capacities of individual ones of the means for storing. Applicants have failed to uncover any teachings that the quantity of data of the protected computer systems exceeds individual data storage capacities of individual ones of the means for storing. Furthermore, the teachings at col. 3, lines 38+ of Wahl disclose volume grouping, or logical groups and Applicants have failed to uncover any teachings in col. 3, lines 38+ of quantities of data of the protected computers systems and the individual data storage capacities of individual ones of the means for storing. Applicants have failed to uncover any teachings that the quantity of data of the protected computer systems exceeds individual data storage capacities of individual ones of the means for storing.

Applicants respectfully submit that the above-mentioned positively recited limitations of the claims are not disclosed in Wahl and the 102 rejection is improper for at least this reason.

Claim 16 also recites *means for assigning individual ones of the means for storing to store data for respective ones of the protected computer systems.*

The Office again relies upon the Summary of Invention section at col. 3, lines

24-54 of Wahl in support of the rejection. The teachings at col. 3, lines 24+ of Wahl teach dynamically assigning more memory space to prevent a memory overflow condition. Applicants submit that the *dynamic assignment of more memory space fails to teach or refer to protected computer systems or the claimed limitations of the means for **assigning** individual ones of the means for storing to store data for respective ones of the protected computer systems*.

Furthermore, Applicants have failed to uncover any teachings in the generic teachings of col. 3, lines 38+ of Wahl with respect to the claimed *protected computer systems*. The generic teachings with respect to volume grouping or logical groups are void of disclosing the positively claimed *means for assigning individual ones of the means for storing to store data for respective ones of the protected computer systems* as claimed.

Applicants respectfully submit that the above-mentioned positively recited limitations of the claims are not disclosed in Wahl and the 102 rejection is improper for at least this reason.

Applicants respectfully request withdrawal of the rejections for at least the above-mentioned compelling reasons.

Independent claim 21 recites a *processor-usable medium **configured to store code configured to cause processing circuitry of storage control circuitry to associate individual ones of the protected computer systems with respective ones of a plurality of storage devices***.

The Office relies upon the teachings of col. 23, line 61 – col. 24, line 29 of Wahl in support of the rejection and as allegedly teaching the claimed association. Applicants respectfully submit the teachings in Wahl fail to teach the claimed limitations. In particular, the “server fail-over computer system” of col. 23 has not been demonstrated to teach or suggest any association let alone the claimed limitations regarding *association of individual ones of the protected computers systems with respective ones of the storage devices*. The teachings in col. 24 of Wahl refer to generic features and Applicants have failed to uncover any reference to protected computer systems therein or the claimed limitations of *association of individual ones of the protected computer systems with respective ones of the storage devices* as claimed.

Applicants respectfully submit that positively-recited limitations of the claims

are not disclosed by Wahl and the 102 rejection is improper for at least this reason.

Claim 21 recites monitoring capacities of the storage devices. The Office relies upon the teachings in cols. 5-6 of Wahl in support of the rejection. The teachings in col. 5, lines 57 – col. 6, line 27 of Wahl generically refer to a configuration of the mirroring system and Applicants have failed to uncover any reference to “capacity” therein or the claimed limitations of monitoring capacities of the storage devices. The teachings relied upon in col. 6 of Wahl at lines 28+ generally discuss primary and secondary computer systems 12, 14 but Applicants have failed to uncover any reference to capacity therein let alone the claimed limitations of monitoring capacities of the storage devices. Applicants have electronically searched Wahl and have failed to uncover any teaching to “capacity” let alone the claimed limitations of monitoring capacities of the storage devices as claimed.

Applicants respectfully submit that positively-recited limitations of the claims are not disclosed by Wahl and the 102 rejection is improper for at least this reason.

Claim 21 additionally recites *receiving a request to add a new protected computer system* and assigning the new protected computer to one of the storage devices responsive to the monitoring of the capacities. The Office refers to the teachings of col. 5, lines 57 to col. 6, line 58 of Wahl. Applicants have failed to uncover any teachings in such portion of Wahl with respect to *assignment of a new protected computer system*. Applicants have additionally failed to locate any teachings of *assignment of the new protected computer system to one of the storage devices*. Applicants have additionally failed to locate any teachings of *assignment responsive to monitoring* as claimed.

Applicants respectfully submit that positively-recited limitations of the claims are not disclosed by Wahl and the 102 rejection is improper for at least this reason.

Applicants respectfully request withdrawal of the rejections for at least the above-mentioned compelling reasons.

Referring to independent claim 24, the data storage method comprising monitoring capacities of individual ones of the storage devices and associating one of the protected computer systems with one of the storage devices responsive to the monitoring. The Office relies upon the teachings of col. 15, lines 1-29 of Wahl in support of the rejection and as teaching the monitoring and the associating.

Applicants have failed to uncover any teaching or reference to a *protected computer system* in col. 15. In addition, Applicants have failed to uncover any teaching in col. 15 of Wahl of the claimed limitations of associating one of the protected computer systems with one of the storage devices responsive to monitoring capacities of individual ones of the storage devices as positively claimed.

Applicants respectfully submit that the above-mentioned positively recited limitations of the claims are not disclosed in Wahl and the 102 rejection is improper for at least this reason.

Claim 24 further recites *implementing storage operations of the data for the associated one of the protected computer systems using the associated one of the storage devices in accordance with the associating* in combination with the monitoring of capacities and associating responsive to the monitoring limitations discussed above. The Office relies upon the teachings of col. 24, lines 5-24 of Wahl as teaching the implementing. However, Applicants respectfully submit that the teachings relied upon by the Office generically refer to providing continuous network data mirroring and data replication and recovery from failures but Applicants have failed to uncover any teachings of the claimed limitations of implementing storage operations for an *associated one* of the protected computer systems *using the associated one of the storage devices* in combination with the other positively claimed limitations.

Applicants respectfully submit that the above-mentioned positively recited limitations of the claims are not disclosed in Wahl and the 102 rejection is improper for at least this reason.

Applicants respectfully request withdrawal of the rejections for at least the above-mentioned compelling reasons.

Referring to independent claim 33, the method recites providing a *plurality of storage devices* of a data management system configured to *store data for a plurality of protected computer systems, and wherein the storage devices are external of the protected computer systems*. The Office relies upon the teachings of Fig. 1 of Wahl as teaching the above-recited limitations. Applicants have failed to uncover any teachings in Fig. 1 of the claimed *protected computer systems* or that the *storage devices are external of the protected computer systems* as positively claimed.

Applicants respectfully submit that positively-recited limitations of the claims are not disclosed by Wahl and the 102 rejection is improper for at least this reason.

Claim 33 further recites monitoring capacities of the storage devices using storage control circuitry. Applicants have failed to uncover any teachings in col. 3, lines 24-37 of Wahl of the claimed limitations of monitoring capacities.

Applicants respectfully submit that positively-recited limitations of the claims are not disclosed by Wahl and the 102 rejection is improper for at least this reason.

Claim 33 recites providing a new storage device configured to store data for at least one of the protected computer systems. Applicants have failed to uncover any teachings in the server fail-over computer system of col. 23 or the generic teachings of col. 24 of Wahl of the claimed limitations regarding providing a new storage device.

Applicants respectfully submit that positively-recited limitations of the claims are not disclosed by Wahl and the 102 rejection is improper for at least this reason.

Claim 33 recites coupling processing circuitry of the new storage device with the storage control circuitry. The Office relies upon the teachings of Fig. 5 of Wahl in support of the rejection. Applicants have failed to uncover any reference in Fig. 5 to a new storage device or coupling processing circuitry of the new storage device with the storage control circuitry which also is claimed as monitoring the capacities of the storage devices as recited above.

Applicants respectfully submit that positively-recited limitations of the claims are not disclosed by Wahl and the 102 rejection is improper for at least this reason.

Applicants respectfully request withdrawal of the rejections for at least the above-mentioned compelling reasons.

Referring to independent claim 43, the **computer network** recites *a plurality of protected computer systems individually comprising processing circuitry configured to process data and storage circuitry configured to store the data*.

Applicants respectfully submit the above-recited limitations are not disclosed by Wahl and the 102 rejection is improper for at least this reason.

Claim 43 also recites, in addition to the protected computer systems, a *data management system* comprising a data storage system configured to store the data of the protected computer systems, *wherein the data storage system comprises a plurality of storage devices individually having a respective capacity, and a quantity*

of the data of the protected computer systems to be stored by the data management system exceeds capacities of individual ones of the storage devices.

Applicants have failed to uncover any teachings in Wahl including col. 3, lines 24-54 regarding the limitations of the capacities of the storage devices or that a quantity of data of the protected computer systems exceeds capacities of individual ones of the storage devices as claimed.

Applicants respectfully submit that positively-recited limitations of the claims are not disclosed by Wahl and the 102 rejection is improper for at least this reason.

Independent claim 43 additionally recites that the data management system comprises *storage control circuitry coupled with the data storage system and configured to assign individual ones of the **individual storage devices** to store data for respective ones of the **protected computer systems**.* The teachings in col. 3, lines 24-54 of Wahl refer to a writelog being configured so that more memory space is dynamically assigned to the writing device to provide a memory overflow condition. Writelog devices are components of the primary computer system 12 which provides primary application and data storage services to a user and Applicants have failed to uncover any teachings in Wahl including the teachings of the writelog devices of Wahl with respect to protected computer systems or the specifically claimed limitations of the storage control circuitry configured to *assign individual ones of the individual storage devices to store data for respective ones of the protected computer systems* as positively claimed.

Applicants respectfully submit that the above-mentioned positively recited limitations of the claims are not disclosed in Wahl and the 102 rejection is improper for at least this reason.

Applicants respectfully request withdrawal of the rejections for at least the above-mentioned compelling reasons.

Referring to page 21 of the Office Action in the Response to Arguments section, the Office has failed to point to any evidence in the record where Applicants have said protected computer systems are well known. Further, paragraph 0021 of the specification is void of any terminology of "well known."

The claims which depend from the independent claims are in condition for allowance for the reasons discussed above with respect to the independent claims as well as for their own respective features which are neither shown nor suggested

by the cited art.

Applicants respectfully request allowance of all pending claims.

The Examiner is requested to phone the undersigned if the Examiner believes such would facilitate prosecution of the present application. The undersigned is available for telephone consultation at any time during normal business hours (Pacific Time Zone).

Respectfully submitted,

Stephen Gold et al.

By: /James D. Shaurette/
James D. Shaurette
Reg. No. 39,833
Date: July 6, 2009